



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2004

Mr. John C. Fisher
District Attorney
First Judicial District of Texas
P.O. Box 740
San Augustine, Texas 75972

OR2004-9343

Dear Mr. Fisher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212240.

The Office of the District Attorney for the First Judicial District of Texas (the "district attorney") received two requests for information from the same requestor, for records concerning the death of a named individual and for records pertaining to another named individual. We have considered your comments and reviewed the submitted information.

As a preliminary matter, we have received a copy of a letter from the requestor to the district attorney dated September 7, 2004, in which the requestor withdraws his request for records concerning Brandon Michael Conn. Accordingly, you need not release any information pertaining to Mr. Conn at this time.

With respect to the request concerning the death of Nathan Edward Boyett, we must address your obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Public Information Act (the "Act") is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. Your submission to this office of August 26, 2004 did not include a copy of the requestor's written request for information, and you did not submit a copy of the request within the fifteen business day deadline as required under section 552.301(e). We therefore find you have failed to comply with the procedural requirements of section 552.301(e) in this instance.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982).

Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). While you indicate your belief that the information at issue should be excepted from disclosure "per the Law enforcement and/or Litigation exception," we find you have failed to establish a compelling reason to withhold the information from disclosure in this instance. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103, the "litigation exception"); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108, the "law enforcement exception"); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (describing discretionary exceptions under Public Information Act that may be waived by governmental body). Accordingly, we determine the submitted information may not be withheld pursuant to your claimed exceptions to disclosure.

We note, however, that the driver's license number of a living person contained in the submitted documents is subject to section 552.130 of the Government Code.¹ Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

¹ Section 552.130 is a mandatory exception to disclosure that cannot be waived by a governmental body. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the Texas driver's license number we have marked in the submitted documents pertaining to the death of Mr. Boyett pursuant to section 552.130 of the Government Code.

In summary, the district attorney need not release information pertaining to Mr. Conn at this time. We have marked a Texas driver's license number in the submitted documents pertaining to the death of Mr. Boyett that must be withheld under section 552.130 of the Government Code. The remainder of the submitted information pertaining to the death of Mr. Boyett is not excepted from required public disclosure and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

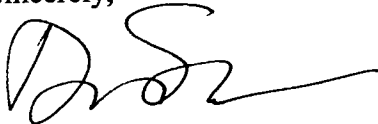
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 212240

Enc: Submitted documents

c: Mr. Ed M. Farrell
The East Texas Sun
P.O. Box 743
Hemphill, Texas 75948
(w/o enclosures)